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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,389	12/10/2001	Jean-Noel Thorel	108961.01	8418

7590 04/07/2004

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EXAMINER

COE, SUSAN D

ART UNIT PAPER NUMBER

1654

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/006,389	Applicant(s) THOREL, JEAN-NOEL	
	Examiner Susan Coe	Art Unit 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-16 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-16 and 21-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>11</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

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DETAILED ACTION

1. In view of the new grounds of rejection stated below, the finality of the Office action of September 22, 2003 is withdrawn.
2. Claims 1-3, 5-16, and 21-29 are currently pending.
3. In Paper No. 6, dated December 2, 2002, applicant's elected with traverse Group I, claims 1-16 and 21-29, amino acid for at least one of the biodermal constituent and trace elements for the non-biodermal constituent.
4. Claims 18-20 are withdrawn from consideration.
5. Claims 1-3, 5-16, and 21-29 are examined on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5-7, 12-16, 23, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by admitted prior art.

In applicant's specification, applicant admits that it was known in the art at the time of the invention that water is a component of the skin. Thus, water meets the limitations of applicant's claims.

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7. Claims 1-3, 5-9, 12-16, and 21-29 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 94/18945.

WO '945 teaches a cosmetic composition that comprises up to 0.1 to 90% of a comeocyte protein (see page 9, last paragraph). These proteins are found in the skin and contain amino acids. The other required ingredient in WO '945 is an additional diluent or dispersant that is present from 1 to about 99% of the composition (see page 10, last paragraph). Specific examples of appropriate diluents or dispersants include fatty acids (see page 10). Additionally the composition can contain ingredients such as water (see page 12) and trace elements (see page 15). These ingredients can be present in a variety of amounts (see page 16, second full paragraph).

8. Claims 1-3, 6-8, 13, 14-16, 21, 23, 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/25023.

WO '023 teaches a composition that contains biodermal constituents such as collagen, elastin, DNA, RNA, and amino acids (see claims 1 and 4). Water can be added as a diluent.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3, 5-16, and 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 94/18945.

WO '945 teaches numerous ingredients that can be combined into a single composition with the skin derived peptide. Since WO '945 teaches that all of these components are beneficially added to the peptide, a selection of any combination of these ingredients is considered to be taught by this reference. The reference also specifically teaches that the amounts of each ingredient can be varied over a wide range as long as the ingredients are present in effective amounts (see page 16). Thus, modifications to the ingredient amounts are also taught by the reference.

In addition, the reference does not specifically teach formulating the cosmetic in all of the forms claimed by applicant. However, these forms are well known in the art to be appropriate for formulating cosmetics. Thus, it is considered an obvious modification of the reference to formulate the disclosed ingredients in known cosmetically acceptable forms.

10. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

A handwritten signature in cursive script, reading "Susan D. Coe".

Susan Coe, Examiner

April 2, 2004

